

SECTION 6 - PROSECUTION, PROGRESS AND ACCEPTANCE OF THE WORK

6-1 CONSTRUCTION SCHEDULE AND COMMENCEMENT OF WORK

After notification of award and prior to the Notice to Proceed, the Contractor shall submit to the Engineer for approval his proposed construction schedule. The construction schedule shall be in the form of a tabulation, chart, or graph and shall be in sufficient detail to show the chronological relationship of all activities of the project including, but not limited to, estimated starting and completion dates of various activities, procurement of materials, and scheduling of equipment. The construction schedule shall reflect completion of all work under the contract within the specified time and in accordance with these specifications.

The Engineer shall decide all questions as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the work; all questions as to the interpretation of the Contract; all questions as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to claims for additional compensation on the part of the Contractor, claims for deductions from the contract price on the part of the City and the amount of compensation due at each payment period. The Contractor, without delaying the job, shall promptly comply with all decisions of the Engineer, and all directions and orders given by the Engineer, and the Engineer shall have the authority to enforce and make effective all such decisions, directives, and orders which the Contractor fails to promptly carry out. Unless a decision of the Engineer is fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, it shall be final and conclusive for all purposes.

Unless otherwise provided, the contract time shall commence upon issuance of a notice to proceed. The work shall start and be diligently prosecuted to completion within the time provided in the Bidding Requirements.

If the contractor desires to make a major change in his method of operations after commencing construction, or if his schedule fails to reflect the actual progress, he shall submit to the City a revised construction schedule in advance of beginning revised operations.

The Engineer may waive these requirements for work constructed under permit.

6-2 PROSECUTION OF WORK

To minimize public inconvenience and possible hazard and to restore streets and other work areas to their original condition and former state of usefulness as soon as practicable, the contractor shall diligently prosecute the work to completion. If in the Engineer's opinion the contractor fails to prosecute the work to the extent that the above purposes are not being accomplished, the contractor shall, upon orders from the Engineer, immediately take the steps necessary to fully accomplish said purposes. All costs of prosecuting the work as described herein shall be absorbed in the contractor's bid. Should the contractor fail to take the necessary steps to fully accomplish said purposes, after orders of the Engineer to do so, the Engineer may suspend the work in whole or in part, until the contractor takes said steps. With or without such

suspension, the Engineer may cause such steps to be taken by force account or other means at the Contractor's expense.

As soon as possible under the provisions of these specifications, the contractor shall backfill all excavations and restore to usefulness all improvements existing prior to the start of the work. The Engineer may require open excavations to be fenced if in his judgement the situation presents a potential hazard to the public.

If work is suspended through no fault of the City, all expenses and losses incurred by the contractor during such suspensions shall be borne by him. If the contractor fails to properly provide for public safety, traffic, and protection of the work during periods of suspension, the City may elect to do so, and deduct the cost thereof from monies due the contractor. Such action will not relieve the contractor from any liability.

6-3 SUSPENSION OF WORK

The work may be suspended in whole or in part, when in the Engineer's opinion the suspension is necessary in the interest of the City. The Contractor shall comply immediately with any written order of the Engineer suspending work. Such suspension shall be without liability to the Contractor on the part of the City. Suspended work shall be resumed upon written order of the Engineer.

6-4 DEFAULT BY CONTRACTOR

If the Contractor shall be adjudged a bankrupt or make a general assignment for the benefit of creditors, or shall fail to make prompt payment to subcontractors, or for labor or materials, or if a receiver shall be appointed on account of the Contractor's insolvency, or if the Contractor shall fail to provide enough properly skilled workers or enough proper materials to insure compliance with the construction time schedule or shall disregard instructions of the Engineer, or if the Contractor shall violate any provision of the Contract, then in any or all of such events the Contractor shall be deemed in default and the City may give written notice to the Contractor that if said default or defaults as specified in said notice are not remedied within a specified time (which shall be not less than five days from receipt of said notice), the Contractor's control over the work will be terminated. If any such default specified in said notice is not remedied, to the satisfaction of the City and the Engineer, within the time specified in said notice, the City may give the Contractor and surety written notice of termination, and on the date specified in such notice the Contractor's control over the work shall terminate.

Upon such termination the City may enter upon and take possession of the entire work and may also take possession, for the purpose of completing the work, of all of the Contractor's tools, equipment and appliances upon the work, and all materials on the site or stored off-site for incorporation into the work; and the City may thereupon call upon and permit the surety on any performance bond given to guarantee the performance of the Contract to take over and complete the work under the Contract, or the City may, at its sole option and without further notice to anyone, take over and complete the work by day labor or by contract entered into by negotiation or by competitive bidding or otherwise, as the City in its sole discretion shall elect.

After termination of the Contractor's control over the work as herein provided, the Contractor shall not be entitled to any further payments under the Contract until the entire work thereunder has been fully completed and finally accepted by the City. After such completion and acceptance, if the unpaid balance of the contract price (as defined in the next paragraph) exceeds the sum of the amounts expended by the City in taking over and completing the work, including all managerial and administrative expense incurred by the City on account thereof, and the amount of all damages incurred by the City by reason of the Contractor's default, such excess shall be paid to the Contractor, but if said sum exceeds said unpaid balance, the Contractor and his surety shall be liable to the City for the difference. The expense incurred by the City in taking over and completing the work, and the amount of any damage incurred by the City by reason of the Contractor's default shall be audited and certified by the Engineer, whose certificate thereof shall be binding and conclusive upon the parties.

For the purposes of the computations required by the paragraph above, the "unpaid balance of the contract price" shall be the original contract price as adjusted by any change orders issued prior to termination of the Contractor's control, less all payments made on account thereof prior to such termination, and less any and all amounts withheld or paid pursuant to stop notice-filed with the City upon claims of subcontractors or others for equipment, labor or materials furnished to the work by order of or contract with the Contractor.

Upon completion and acceptance of the work, the Contractor shall be entitled to the return of all his materials not used in the work, but without claim against the City for loss or damage with respect thereto, and shall be entitled to the return of all his equipment, tools and appliances taken possession of by the City, but without claim against the City for any charge for the use thereof or for usual and ordinary depreciation and wear and tear.

The remedies provided in this paragraph for default of the Contractor shall be in addition to, and the exercise thereof shall not be deemed a waiver by the City of, any other rights and remedies of the City under the Contract or afforded by law for default of the contractor.

6-5 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

If the work should be stopped by order of any court or other public authority through no act, omission or fault of the Contractor or any subcontractor, agent or employee of the Contractor, and such work stoppage under such order shall continue for thirty consecutive days from the effective date of such order, or if the Engineer shall fail or refuse, except on account of an act or omission of the Contractor or for which he is responsible under the Contract, to issue any certificate for payment within thirty days after it is due or the City shall fail to pay any such certificate, less deductions or withholds made pursuant to the Contract within thirty days after its presentation, then the Contractor may give written notice to the Engineer and the City of intention to stop work or terminate the Contract, or both, unless the default or defaults, which shall be specified in the notice, are remedied within ten days from receipt of such notice. If, after the expiration of said time, the default or defaults specified in the notice have not been remedied, the Contractor may stop work and may give written notice of termination of the Contract to the City, and may recover from the City payment for all work executed and any loss sustained upon any equipment or materials procured for the work prior to the work stoppage, but such right to recovery shall be subject, however, to the duty of the Contractor to mitigate all loss or damage so far as reasonably possible.

6-6 TERMINATION OF CONTRACT

Upon written notice to Contractor, the Council may terminate the contract at its own discretion or when conditions encountered during the work make it impossible or impracticable to proceed, or when the City is prevented from proceeding with the contract by act of God, by law, or by official action of a public authority.

6-7 DELAYS AND EXTENSIONS OF TIME

Extensions of time, when granted, will be based upon the effect of delays to the project as a whole and will not be granted for non controlling delays to minor included portions of the work unless it can be shown that such delays did, or will in fact, delay the progress of the project as a whole.

If delays are caused by unforeseen events beyond the control of either the Contractor or the action or inaction by the City, such delays will entitle the contractor to an extension of time as provided herein but the contractor shall not be entitled to damages or additional payment due to these delays. War, governmental regulations, priorities, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of work, other similar action of the elements, inability to obtain materials, equipment, or labor because of Federal Government restrictions arising out of the National Defense or War Program, required "Extra Work", action or inaction by the City, or other specific reasons as may be further described in the specifications may constitute such a delay.

If the contractor is delayed by the failure of the City to furnish necessary rights of way or materials agreed to be furnished by it, or by failure to supply necessary plans or instructions concerning the work within a reasonable time and after written request therefor, the Contractor shall be entitled to an extension of time as provided herein.

If delays beyond the contractor's control are caused by reasons other than those mentioned above, but substantially equal in gravity to those enumerated and an extension of time is deemed by the Engineer to be in the best interests of the City, an extension of time may be granted. Within 30 days after the beginning of such delay, the contractor shall file with the Engineer a written notice and report as to the cause and extent. Failure by the contractor to file these item may result in refusal to grant a compensating extension of time.

If the contractor desires an extension of time, he shall file a written request based upon the delays reported. The Engineer will ascertain the facts, the extent of the delays, and the effect upon the entire project, and the City will grant an extension of time equivalent to verified time lost. The request for extension must be made at least 15 days before the specified completion date.

6-8 TIME OF COMPLETION

The contractor shall complete the work within the number of calendar days or working days set

forth in the contract.

A working day is defined as any day, except Saturdays, Sundays and legal holidays and days on which the Contractor is specifically required by the special provisions to suspend construction operations and except days on which the Contractor is prevented by inclement weather or conditions resulting immediately therefrom adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on such operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations.

Should the Contractor prepare to begin work at the regular starting time in the morning of any day on which inclement weather, or the conditions resulting from the weather, or the condition of the work, prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter during said day and the major portion of the day could be considered to be suitable for such construction operations.

6-9 COMPLETION AND ACCEPTANCE

The work will be inspected by the Engineer for acceptance promptly upon receipt of the contractor's written assertion that the work has been completed.

If, in the Engineer's judgement, the work has been completed in accordance with the plans and specifications and is ready for acceptance, he will so certify and accept the completed work or, at the City's option, so certify to the Council, which may accept the completed work. The Engineer will in his certification give the date when the work was completed. This will be the date when the contractor is relieved from responsibility to protect the work. This will also be the date to which liquidated damages will be computed.

6-10 LIQUIDATED DAMAGES

Time of performance is of the essence of the contract entered into pursuant to these specifications, and the City and the contractor, by executing the contract, each agrees that actual damages to the City, and actual damages for the inconvenience and loss which will flow to the inhabitants of the City, from any delay (other than that caused by the failure of the City or a utility to remove or relocate a utility facility) in completion beyond the date or dates provided herein for the completion of the work, or portions thereof, are extremely difficult or impossible to determine, and, accordingly, it is agreed that the Contractor shall be liable for and shall pay to the City the sums and rates stated in the Bidding Requirements.

The Contractor shall not be assessed liquidated damages for delay in completion of the work or project, when such delay is caused solely by the failure of the City or the owner of a private or public utility to provide for the removal or relocation of existing utility facilities when the existence of such utility facilities substantially prevents or hinders completion of the project or work.

6-11 USE OF IMPROVEMENT DURING CONSTRUCTION

The City reserves the right to take over and utilize all or part of any completed facility or appurtenance. Such action by the City will relieve the Contractor of responsibility for injury or damage to said completed portions of the improvement resulting from use by public traffic or from the action of the elements or from any other cause, except injury or damage resulting from the contractor's operations or negligence. The Contractor will not be required to reclean such portions of the improvement before acceptance, except for cleanup made necessary by his operations. Nothing in this section shall be construed as relieving the contractor from full responsibility for correcting defective work or materials.